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# The Renaissance Road: Redesigning the Legal Writing Instructional Model

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# THE RENAISSANCE ROAD: REDESIGNING THE LEGAL WRITING INSTRUCTIONAL MODEL

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## I. INTRODUCTION

The status quo in the required legal writing curriculum of legal education is a two-semester program in the first year of law school. However, this program requires that students simultaneously rethink and develop their legal writing skills while being taught an entirely new language - the language of the law.<sup>1</sup> This program expects mastery from all students without accounting for their necessary rebirths or providing multiple opportunities for depth on various assignments. By contrast, institutions can rethink how they educate future lawyers and transition to a three-semester program, which allows more opportunity for horizontal growth and vertical advancement beyond the standard curriculum. This article discusses the rebirth of the legal writing curriculum to involve instruction in legal writing fundamentals and advanced subject matter, skills, and techniques. Starting by an analysis of the two-semester model, this article discusses the pedagogical value in transitioning to a three-semester system. This article also compares three-semester programs at various institutions, draws conclusions regarding which elements of a three-semester program should be in an ideal program, and makes recommendations for how an institution can redesign its program structure and content.

## II. WHAT KIND OF REBIRTH?

Most students come to law school with a set of preconceived notions about the experience. A relative or friend who is an attorney may have recounted the grueling nature of the Socratic Method, the student may have watched *The Paper Chase* or read

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1. It is noted that often students have linguistic barriers to learning the legal language. In many countries the language of instruction for legal education is English, yet the entire student population may not be native English speakers. For these students, there are two language skills that are being learned simultaneously: communication in English and communication in the legal language.

books about law school, or maybe an upper-level student may have described the amount of study time required or displayed the numerous heavy texts filled with lengthy cases. For almost every student, law school is a rebirth. It is a change in study habits, in thought processes, and in communication and language.

One area where students tend to resist this rebirth is in the legal writing classroom. Consistently, a substantial number of students entering law school studied liberal arts or literature, or another area that involved writing essays in their undergraduate education.<sup>2</sup> These students are achievers; else, they would not have made it into law school. Each fall semester, legal writing professors are faced with the daunting task of teaching their greenling 1Ls<sup>3</sup> the essence of legal writing, somewhere between the students' learning new study habits and techniques and absorbing several other doctrinal areas.<sup>4</sup> Starting from day one, these professors are expected to convey the importance of case briefing, citation, case analysis, rule synthesis, the IRAC method, and more. Further, in nearly all schools, the mandatory legal writing curriculum spans two semesters in the first year.<sup>5</sup> Unfortunately, it takes time to see that a rebirth is necessary to be successful in legal writing.

Legal writing is unlike any other form of writing a student would have previously experienced.<sup>6</sup> Yet, the average student

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2. University officials advise pre-law students on the core skills and values of the legal profession, one of which is the development of legal writing skills, noting that "[f]undamental writing skills . . . must be acquired and refined before you enter law school. You should seek as many experiences as possible that will require rigorous and analytical writing, including preparing original pieces of substantial length and revising written work in response to constructive criticism." American Bar Association (ABA), *Preparing for Law School*, <http://www.abanet.org/legaled/prelaw/prep.html> (last visited Dec. 10, 2009). See generally Law School Admissions Council, *Preparing for Law School*, <http://www.lsac.org/aboutlawschool/preparing-for-law-school.asp> (last visited Dec. 10, 2009) ("Whatever major you select, you are encouraged to pursue an area of study that interests and challenges you, while taking advantage of opportunities to develop your research and writing skills. . . . The student who comes to law school lacking a broad range of basic skills and knowledge will face a difficult challenge.").

3. 1L is a common designation for a first-year law student.

4. A full-time fall semester usually involves four to five classes.

5. ASSOCIATION OF LEGAL WRITING DIRECTORS-LEGAL WRITING INSTITUTE (ALWD-LWI), 2008 SURVEY RESULTS, Aug. 19, 2008, at i, [http://www.lwionline.org/uploads/FileUpload/2008Surveyresults\(REVISED\).pdf](http://www.lwionline.org/uploads/FileUpload/2008Surveyresults(REVISED).pdf).

6. Students who enter law school with prior legal experience (*e.g.*, paralegal) are more familiar with the practice of law. Here, the challenge at the

resists the idea of needing help with “writing,” she was successful in her writing before law school – so why change what she has been doing?” For the average student, she only realizes how difficult legal writing can be after she receives comments on the first graded paper and discusses those comments with the instructor. In a typical course, this may be somewhere between one-third and one-half of the way through the fall semester, by comparison to an end-of-semester examination in a doctrinal course.<sup>8</sup> In the worst scenario, it takes the student’s receipt of a low grade in the entire fall course before she realizes that her former thought and writing processes will not suffice. Two consequences result: the student has less time than the full amount allocated for the curriculum to master the skill set, and the student who is unprepared for detailed feedback (or not fully committed to the necessary rebirth) is much more likely to express exhaustion, frustration with grades, and a general distaste for the entire legal writing process and law school generally.<sup>9</sup>

At some schools, the curriculum is different. Indeed, at the ideal law school, the student’s aversion to change is incorporated into the educational time allocated to the skill set. Instead of twenty-eight (28) weeks formulating the required legal writing curriculum, these schools devote at least forty-two (42) weeks, or three full semesters to learning the same general skills that one would hope could be covered in the shorter time. Preferably, these three semesters are in sequence, starting in the 1L fall semester and continuing through the end of the 2L fall semester, though some institutions provide options for when students must take the third-semester course. Notably, the third-semester is not just an upper-level course that requires a paper to fulfill an advanced writing requirement (AWR), as there are multiple ways to fulfill the AWR, such as writing a note for law review. In a three-semester program, the third semester is a pre-designed

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onset is to make these students appreciate the need to learn the basics, even though in the real world, things might be done differently.

7. See Jan M. Levine, *You Can't Please Everyone, So You'd Better Please Yourself: Directing (or Teaching in) a First-Year Legal Writing Program*, 29 VALPARAISO UNIVERSITY LAW REVIEW 611, 615-16 (1995) (“[T]he very idea that students need help with ‘writing’ is likely to be a shock to most and a potential source of resentment.”).

8. *Id.* at 616.

9. “The feedback to students in legal writing courses certainly is provided earlier than it is in other law school courses, but it is also far more extensive, personal, and troubling, especially if students are unprepared for, or unused to, extensive written criticism.” *Id.* at 615.

part of the curriculum that every student must take. The intention is to build up a foundation in the first semester, while simultaneously adjusting students to the concept of a rebirth in their writing. Thus, when the second, more rigorous, semester is underway, the students should, in theory, have already accepted the changes in thought, structure, and language that are necessary to communicate the law effectively. This paper involves two kinds of rebirths: the renaissance of the students in terms of their thinking, conceptions, and skills, which forms the necessary foundation for more in-depth skill development; and an institution's renaissance of its legal curriculum from two to three semesters, in which students will have sufficient time to develop their skills. This paper also discusses curriculum approaches to help an institution form the elements of the program. With a solid foundation in a first semester course, students can venture into an advanced legal writing curriculum, and can develop both horizontally and vertically in a three-semester system.

### III. ABA STANDARDS

In the United States, there are 200 accredited institutions of legal education of which 199 confer a first degree in law, with one institution (the U.S. Army Judge Advocate General's School) conferring a specialized program beyond the first degree.<sup>10</sup>

The American Bar Association (ABA)'s Council and the Accreditation Committee of the Section of Legal Education and Admissions to the Bar function separately from the ABA, and they make up the accrediting agency recognized by the U.S. Department of Education for accrediting programs leading to a first degree in law.<sup>11</sup> In most states, ABA accreditation is required for a graduate from an institution to sit for the state bar examination,<sup>12</sup> which is required for licensing as an attorney. The accreditation

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10. ABA, *ABA-Approved Law Schools*, <http://www.abanet.org/legal-ed/approvedlawschools/approved.html> (last visited June 15, 2010).

11. *The Law School Accreditation Process*, A.B.A. SEC. OF LEGAL EDUC. & ADMISSIONS TO THE BAR. 3, [http://www.abanet.org/legaled/resources/13665\\_ABA\\_accred\\_web150.pdf](http://www.abanet.org/legaled/resources/13665_ABA_accred_web150.pdf) (last visited Dec. 19, 2009).

12. ABA, *Frequently Asked Questions*, <http://www.abanet.org/legaled/resources/faq.html> (last visited June 15, 2010) ("In many states, a person may not sit for the bar examination unless that person holds a J.D. degree from an ABA-approved law school. Other states have additional requirements that a student must meet in order to qualify to sit for that state's examination, including allowing some graduates of non-ABA approved law schools to sit for that state's bar examination.").

process is regulated by the Standards and Rules of Procedure for Approval of Law Schools, and these Standards and Rules are promulgated by the Council.<sup>13</sup> Law schools are required to satisfy the Council's Standards and Rules in order to be ABA-approved.<sup>14</sup> The accreditation process involves provisional approval, full approval, and review after full approval is granted.<sup>15</sup> Site evaluations are conducted as part of accreditation and post-accreditation review.<sup>16</sup> Accreditation serves to demonstrate that each accrediting institution provides a "sound legal education."<sup>17</sup> The Standards for accreditation address multiple criteria for accreditation, including: organization and administration; program of legal education; faculty; admission and student services; library and information resources; and facilities.<sup>18</sup>

The ABA sets out the primary purpose of legal education as being the forum "that prepares its students for admission to the bar, and effective and responsible participation in the legal profession."<sup>19</sup> The ABA gauges an institution's compliance with this requirement based on two chief factors: 1) "the rigor of its academic program, including its assessment of student performance," and 2) "the bar passage rates of its graduates."<sup>20</sup> According to Interpretation 301-6, the ABA looks holistically at the last five years to evaluate bar passage rates.<sup>21</sup> Notably, at the 2010 American Association of Law Schools meeting in January 2010, a proposed refocus of the Chapter 3 Standards on "student learning outcomes" was discussed.<sup>22</sup> This signified a shift from focusing on

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13. ABA, *supra* note 11, at 3.

14. *Id.* at 3.

15. *Id.* at 5-8.

16. *Id.* at 10-11.

17. ABA, *2009-2010 Standards for Approval of Law Schools – Chapter 1: General Purposes and Procedures*, at 1, <http://www.abanet.org/legal-ed/standards/2009-2010%20StandardsWebContent/Chapter1.pdf> (last visited Dec. 19, 2009).

18. ABA, *Standards for Approval of Law Schools*, <http://www.abanet.org/legaled/standards/standards.html> (last visited Dec. 19, 2009).

19. ABA, *2009-2010 ABA Standards for Approval of Law Schools, Chapter 3, Program of Legal Education*, at Standard 301(a), <http://www.abanet.org/legaled/standards/2009-2010%20StandardsWebContent/Chapter3.pdf> (last visited Apr. 11, 2010).

20. *Id.* at 19.

21. *Id.*

22. The proposal would change Interpretation 301-1, which presently reads, "A law school shall maintain an educational program that prepares its students to address current and anticipated legal problems" ABA, *supra* note 20, to read "This Chapter includes Standards to ensure that law schools maintain

bar passage rates and inputs (the academic program itself) to a focus on quality and whether students learn.

Based on the existing structure, as further guidance, the ABA requires that the curriculum of legal education involve “substantial instruction” in five areas:

(1) the substantive law generally regarded as necessary to effective and responsible participation in the legal profession;

(2) legal analysis and reasoning, legal research, problem solving, and oral communication;

(3) writing in a legal context, including at least one rigorous writing experience in the first year and at least one additional rigorous writing experience after the first year;

(4) other professional skills generally regarded as necessary for effective and responsible participation in the legal profession; and

(5) the history, goals, structure, values, rules and responsibilities of the legal profession and its members.<sup>23</sup>

According to the ABA, “rigorous” in Standard 302(a)(3) is assessed by weighing “the number and nature of writing projects assigned to students; the opportunities a student has to meet with a writing instructor for purposes of individualized assessment of the student’s written products; the number of drafts that a student must produce of any writing project; and the form of assessment used by the writing instructor.”<sup>24</sup> Law schools tend to view these Standards as accreditation minimums, and satisfactory curricula can look very different.

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an education program that prepares students for the effective, ethical and responsible participation in the legal profession. Standard 302 provides that law schools identify desired learning outcomes. Standard 303 provides that law schools offer a curriculum that is designed to produce graduates that have attained the identified learning outcomes. Standard 304(a) provides that law schools assess whether students are achieving the identified learning outcomes. Standard 304(b) provides that law schools review the pedagogical effectiveness of its curriculum and improve its curriculum with the goal that all students are likely to achieve proficiency in the identified learning outcomes. These Standards do not require that law schools determine that each and every law student, as a condition of graduation, be proficient in each and every outcome that the law school determines pursuant to Standard 302.” ABA, *Student Learning Outcomes: Draft for January 8 - 9, 2010 Meeting - Chapter 3, Program of Legal Education*, 2010 SEC. OF LEGAL EDUC. & ADMISSIONS TO THE BAR - STANDARDS REVIEW COMMITTEE, available at <http://www.abanet.org/legaled/> (copy on file with Author).

23. ABA, *supra* note 19, at 21.

24. *Id.* at 22.

To help guide law schools, the ABA's Task Force on Law Schools and the Profession produced a comprehensive report in 1992, which describes, among other things, "a vision of the skills and values new lawyers should seek to acquire."<sup>25</sup> Specifically, the MacCrate Report provides law schools with clarification for how to implement Standards 302(a)(2) and (a)(3). The report provides that new lawyers should seek to acquire ten fundamental lawyering skills: (1) problem solving; (2) legal analysis; (3) legal research; (4) factual investigation; (5) communication; (6) counseling; (7) negotiation; (8) familiarity with comparative litigation and alternative dispute resolution; (9) organization and management of legal work; and (10) recognition and resolution of ethical dilemmas.<sup>26</sup> As an additional tool, many law schools consider "Best Practices for Legal Education."<sup>27</sup>

As such, institutions that have undergone recent curricular change tend to focus on a combination of integration of the ABA curricular minimums, the MacCrate skills, and "Best Practices" in their curricula. The MacCrate Report is the most commonly cited policy instrument mitigating curricular change, which though necessary for growth, can be costly, both financially and in terms of time and faculty involvement. The ABA accreditation bodies already input substantial time commitments and costs into institutional curricula by means of its pre- and post-accreditation site visits.<sup>28</sup> By contrast, often times, a faculty may be skeptical of undergoing a substantial change for fear of its impact on bar passage rates or U.S. News rankings.<sup>29</sup> In addition, the three-year rule – that it will take three years from a major curricular change to determine the implication of that change on the first graduating class – tends to require that even seemingly minor curricular changes be institutional commitments.

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25. ABA, SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, AN EDUCATIONAL CONTINUUM REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP, July 1992, Chapter 5, <http://www.abanet.org/legaled/publications/onlinepubs/maccrate.html> (hereinafter MACCRATE REPORT).

26. *Id.*

27. ROY STUCKEY, BEST PRACTICES FOR LEGAL EDUCATION (Clinical Legal Education Association, 2007).

28. ABA, *Law School Site Visits*, <http://www.abanet.org/legaled/accreditation/sitevisit/acvisits.html> (last visited Apr. 11, 2010).

29. Rankings: Best Law Schools, U.S. NEWS & WORLD REPORT, <http://grad-schools.usnews.rankingsandreviews.com/best-graduate-schools/top-law-schools/rankings> (last visited June 15, 2010).



Regardless of the process by which future lawyers are educated, skill development and training must occur before an individual is licensed by the bar to practice law.<sup>30</sup> Aside from experiential programs, such as clinics, doctrinal simulation courses, and dispute resolution programs, a U.S. institution's legal writing program is the foundation of skill development. While it may be defensibly easier to put off making doctrinal curricular changes, such as changing the number of required doctrinal courses, an institution defers evaluation of the content and quality of its chief skill development flagship at its own peril. It should go without saying that when external pressures (the most notable being low bar exam passage rates) suggest a lacking in the skill set of an institution's graduates, the institution must endeavor to evaluate its program internally. Yet, even without substantial external pressures, an institution owes its students an obligation to look within itself and determine whether it is providing a quality skill development platform from which its students may launch into the practice of law. In fact, the ABA requires that "a law school . . . engage in periodic review of its curriculum to ensure that it prepares the school's graduates to participate effectively and responsibly in the legal profession."<sup>31</sup> Thus, an institution need not wait for an external circumstance or mandate to assess whether it is providing sufficient opportunities for students to develop the MacCrate skills.

In fact, based on the same three-year rule that dictates an institution's minimum commitment to any curricular change, an institution should weigh the skill set of each graduating class against a predetermined set of skill outcomes and assess the legal writing program and skill instruction to which that same class was exposed. Thereafter, the graduating class's bar passage rate or other objective factors may be integrated into the assessment of outcomes. Based on a multi-year assessment, an institution should "assess[] institutional effectiveness" by determining the benefits of its legal writing and skill program, and undertaking whatever changes are necessary to "progressively develop knowledge, skills, and values" and "help [its] students acquire the attributes of effective, responsible lawyers."<sup>32</sup>

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30. Compare Bar Standards Board, *Education and Training*, <http://www.barstandardsboard.org.uk/Educationandtraining/> (last visited Mar. 21, 2010), and Bar Standards Board, *Vocational Stage*, <http://www.barstandardsboard.org.uk/Educationandtraining/aboutthebvc/> (last visited Mar. 21, 2010), with ABA, *supra* note 19 at Standard 302.

31. ABA, *supra* note 19, at 23.

32. Stuckey, *supra* note 27, at 65, 94, 265.

## IV. THE TRADITIONAL TWO-SEMESTER PROGRAM

Focusing on the curriculum of legal education, in nearly all schools, the mandatory legal writing curriculum spans two semesters in the first year.<sup>33</sup> The ABA Standards only require a curriculum that instructs on “writing in a legal context, including at least one rigorous writing experience in the first year and at least one additional rigorous writing experience after the first year.”<sup>34</sup> The latter requirement is commonly viewed as the upper-level writing requirement.<sup>35</sup> At most schools the upper-level writing requirement can be met through non-classroom avenues, including law review articles, advanced moot court briefs, seminar papers, and independent research.<sup>36</sup> As a result, the typical law school curriculum’s provision for two semesters or two purportedly rigorous writing experiences in the first year should exceed the Standards.<sup>37</sup> In the typical academic year, this provides the student and the teacher a mere twenty-six (26) instructional weeks<sup>38</sup> to go from novice to natural.

The traditional legal writing curriculum involves two graded semesters<sup>39</sup> in the first year: a fall semester involving

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33. ALWD-LWI, *supra* note 5, at i (In 2008, of 197 schools polled, 181 schools responded, which equates to about 92% of all ABA-accredited law schools. Of the responder schools, 179 schools reported that the required program spans two semesters in the first year. Of these, 47 schools reported having an additional credit allocation for the required program in the fall of the second year.). For purposes of a more comprehensive study, the Author has used data from the 2008 ALWD-LWI Survey, as opposed to the more recent 2009 ALWD-LWI Survey, since the latter Survey only included data from “166 U.S. law schools, representing approximately 84% of all ABA-accredited law schools.” See ALWD-LWI, 2009 SURVEY RESULTS, Dec. 2009, at i, <http://www.lwionline.org/uploads/FileUpload/2009SurveyResults.pdf>.

34. ABA, *supra* note 19, at Standard 302.

35. See ALWD-LWI, *supra* note 5, at 20 (In 2008, 165 schools reported that students satisfy an upper-level writing requirement, beyond the required program for graduation.).

36. VERMONT LAW SCHOOL, ACADEMIC REGULATIONS 2009-2010, at II.A.d., pp. 4-6 (copy on file with Author).

37. It should be noted that the ABA Standards are, at times, ideals and at other times, minimums, and that schools should strive to exceed them by far, not just meet them.

38. In a semester system, the academic year may be as short as two terms of thirteen weeks, so long as it involves no less than 130 days of regularly scheduled classes. See ABA, *supra* note 19, at 24.

39. ALWD-LWI, *supra* note 5, at 9 (In 2008, 158 of 181 schools (87%) responding reported having graded courses in the required legal writing program.).

predictive writing and a spring semester involving persuasive writing and advocacy. In a national survey of law schools, the average credit hour allocation to legal writing in the fall semester of the first year is 2.36, and the average credit hour allocation in the spring semester is slightly less, at 2.24.<sup>40</sup> Over the course of the program, students in small section classes are trained in legal analysis, research and citation. The main assignment in the predictive writing semester is typically the office memorandum, while the main assignment in the persuasive writing semester is typically the appellate brief.<sup>41</sup> In 2008, of the 177 schools that reported having a required course in advocacy, 145 (or 82%) reported that course being in the spring semester of the first year.<sup>42</sup> These schools follow the traditional trajectory (two semesters in the first year) ending their mandatory curriculum in legal writing with the appellate brief, which is the end stage of litigation.

In an ideal setting, legal writing professors can spread legal writing skill development out over time and instruct through building blocks,<sup>43</sup> in which students build on a growing skill set working towards a comprehensive final project.<sup>44</sup> These professors are certainly in the best position to instruct on skills in an indi-

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40. This is based on 179 schools reporting credit allocations in the first year. *Id.* at 7.

41. *Id.* at 12 (In 2008, 176 schools reported assigning the office memorandum, and 137 schools reported assigning the appellate brief.). See Michael R. Smith, *Alternative Substantive Approaches to Advanced Legal Writing Courses*, 54 J. LEG. EDUC. 119, 122 (2004) (quoting Lucia Ann Silecchia, *Designing and Teaching Advanced Legal Research and Writing Courses*, 33 DUQ. L. REV. 203, 217 (1995)).

42. ALWD-LWI, *supra* note 5, at 8.

43. The building block theory or constructivism involves students mastering basic information (what is a case?), then moving to the next block and determining its relevance to the first (what can you determine and find using a case?). Thereafter, students use these blocks of information to learn the next block (what is the process of finding cases in the library or in an online database?), followed by discussion and analysis, (what is the social context of the information learned?), and adding a concrete factual basis (what situations are affected by the law found and how does the law affect a particular client?). Students then evaluate the tower built and use it as a model to build the next tower (writing the next legal memo). See generally Wesley A. Hoover, *The Practice Implications of Constructivism*, SEDL Letter, Vol. IX, No. 3, (Aug. 1996), available at <http://www.sedl.org/pubs/sedletter/v09n03/practice.html>.

44. See Levine, *supra* note 7, at 622-23 ("Assignments over the year must be created with a view to increasing difficulty, increasing ambivalence in the answers, and ever-greater sophistication of analysis, in an upward-spiraling recursive pattern, requiring practice of prior skills along with the acquisition of new skills.").

vidualized way. But by comparison to their doctrinal colleagues who routinely lecture through the Socratic method,<sup>45</sup> legal writing professors spend less time lecturing (32% of class time) and more time engaging with students in hands-on skill development exercises, such as individual in-class exercises (10%), demonstrations (11%), group in-class exercises (17%), in-class writing (8%), and question and answer discussion sessions (23%).<sup>46</sup>

If a legal writing professor spends one-third of her instructional time lecturing, then in a two-semester program, she spends on average four and a half weeks each semester lecturing on the basics and substance. If the class meets twice per week (a generous estimate based on a typical three (3) credit course), then this time accounts for nine class days allocated to covering what amounts to the foundation of the student's entire legal education. In a first-semester fall course, where students are unfamiliar with legal analysis, the professor must devote substantial time to, at minimum: discussing the American legal system and the basics of civil procedure; teaching students how to read, brief, dissect, and synthesize cases; educating students about the legal paradigm and why it works; covering citation forms and their importance; and explaining the process to determine the requisite depth of analysis for legal issues. If the course combines legal re-

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45. The Socratic Method is "[a] ritual in which an individual at the top of the hierarchical chain of command will ask a series of increasingly difficult questions about [the substance and its application to a problem] to someone closer to the bottom (almost always in front of his/her peers). In theory, and when done correctly, this is in the service of teaching. In its worst form, this can serve more effectively to reinforce the [classroom's] power structure by demonstrating how much the questioner knows in relationship to the one being questioned . . . ." William Wood, *Emerging Uses of an Ancient Art: the Socratic Method*, 10 HEMONC TODAY 12, 34 (2009). See also Robert Perry Barnridge, Jr., *The Socratic Method in the Teaching of International Law*, Mar. 27, 2009, at 3, Working Paper Series, available at SSRN: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1369278](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1369278) ("When a teacher begins a Socratic dialogue by calling on a student, attention shifts to the two alone, the rest of the students observing from the outside, as an audience. The teacher's questions probe the chosen student as to the facts of the dispute, the procedures taken by the court, the nature of the case brought by the prosecution or plaintiff, the legal rules at issue, and the holding of the case. Attempts are made to parse assumptions and introduce hypotheticals, and the student is asked to respond to these. . . . The teacher interrogates and uses few declaratory statements in the exchange; the student responds to the questions asked and is generally discouraged from asking questions herself.").

46. ALWD-LWI, *supra* note 5, at 12-13.

search with legal writing,<sup>47</sup> the professor must also devote time to cover the basics of print and electronic research, the process of finding and evaluating cases, statutes, and secondary sources and highlighting relative weights of authority and precedent. It is not typically until late in the fall or sometime in the spring semester, when students are expected to begin refining their analysis, that advanced legal skills are introduced, such as varying the legal paradigm, engaging in multi-issue analysis, grappling with more complex fact patterns, actively researching the law on point, and so on.

It is no wonder then that when these professors spend only a third of their time lecturing, a two-semester program does not usually afford sufficient time to teach doctrinal substance that the students have either not already learned or are simultaneously in the process of learning.<sup>48</sup> In a two-semester program, the focus is rightfully on the development of the skill of legal writing, and less on the learning of how to analyze a substantive legal doctrine, the intricacies of the law in a specific area, or grappling with legal issues beyond the first-year curriculum.<sup>49</sup>

#### V. LEGAL WRITING INSTRUCTION – NOT JUST FOR AMERICAN ATTORNEYS?

Although this article focuses primarily on American legal education, it is illustrative to note that even in educational systems wholly different from that in the United States, similar

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47. According to Levine, *supra* note 7, at 622, “[l]egal research is best taught when integrated wholly with legal writing, as interconnected parts of legal discourse and analysis; all student writing assignments should be research-based.” See also ALWD-LWI, *supra* note 5, at 10 (In 2008, 151 schools (77% of responding schools) indicated that legal research is integrated with legal writing, and at 140 schools (71% of responding schools), legal research and writing faculty are involved in the instruction of legal research.).

48. In the author’s experience teaching in two-semester programs, often the faculty in and outside of the legal writing program are reluctant to challenge students with problems outside standard first year courses, justifying the decision with either a concern that there will not be enough time to teach the substance, or that the students will not be able to master both the substance and the skills.

49. See generally ALWD-LWI, *supra* note 5, at 12-13 (In describing what is not the focus of first-year legal writing courses, in 2008, of 170 school, 69.4% do not “regularly create for [their] required legal writing program research or writing assignments that focus on public interest legal issues.”).

guidelines, goals, and skills are sought.<sup>50</sup> Accordingly, for purposes of comparison, the pathway to the practice of law in England will be discussed. Similar to in the US, the American Bar Association has substantial input into legal education,<sup>51</sup> in England, the Bar Council/Bar Standard Board and Solicitors Regulation Authority influence the educational component and control the vocational component.<sup>52</sup>

Unlike the study of legal education in the United States, which is a professional graduate-level program culminating in a Juris Doctorate, legal education in England<sup>53</sup> constitutes post-secondary study commencing at the undergraduate level culminating in a Bachelor's degree in Law. One initial difference between the American legal education and English legal education is that in the United States, students "study law" after completion of a first degree; whereas, in England, students "read law" as their first degree.<sup>54</sup>

Students complete their Sixth Form (Years 12 and 13) studies and then take an entrance examination as required by the institutions to which they are applying. Some institutions require the Law National Admissions Test (LNAT) while others require their own admissions tests.<sup>55</sup> For example, the Cambridge Law Test requires applicants to answer one question in one hour, and questions can be one of three question types: essay,

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50. Countries in which legal education is studied at graduate level may have more in common with the U.S. system of legal education, whereas countries in which students become lawyers after undergraduate study alone may have more in common with the English system.

51. ABA, *supra* note 18.

52. Bar Council (UK), *Main page*, <http://www.barcouncil.org.uk> (last visited Mar. 21, 2010); Bar Standards Board, *Education and Training*, *supra* note 30; Bar Standards Board, *Vocational Stage*, *supra* note 30; Solicitors Regulation Authority, *Training contract information*, <http://www.sra.org.uk/students/training-contract.page> (last visited Mar. 21, 2010).

53. The English Legal System is being used as the model here, for purposes of simplification and clarity. It is recognized that the Scottish system is different, as are systems in other British Commonwealth nations, including Canada, New Zealand and Australia.

54. The distinction in terminology between "study" and "read" tends to suggest (perhaps falsely) that the program of education in England is a more passive interaction with the law, than one involving a more active interaction.

55. University of Cambridge, *Cambridge Law Test*, <http://www.law.cam.ac.uk/admissions/cambridge-law-test.php> (last visited Mar. 21, 2010).

problem, or comprehension.<sup>56</sup> By contrast, the LNAT is a two-hour test involving an eighty-minute multiple choice component and a forty-minute essay component.<sup>57</sup> The multiple choice component involves “10 argumentative passages, with 3 multiple-choice questions on each,” and the essay component “gives the candidate a choice of questions on a range of subjects.”<sup>58</sup> Cambridge decided to stop using the LNAT, based on its assessment that “applicants’ results in the multiple choice part of the LNAT do not provide information which is sufficiently useful and distinctive to justify requiring applicants to sit for the test and pay the fee involved in doing so.”<sup>59</sup>

Regarding course preparation, the best applicants have taken A-level<sup>60</sup> coursework “that develop[s] a careful, analytical approach to reading and which require[s] them to present information in a way which is well structured and thoughtfully argued.”<sup>61</sup> One college specifically states that it does not recommend or require the A-level in Law, and furthermore, it actively “frown[s] upon A-levels in trendy and dubious subjects such as Media Studies, Business Studies and Sports Studies” because “the more ‘traditional’ and rigorous A-level subjects provide the best preparation for the study of Law. . . .”<sup>62</sup> Thus, this college strongly encourages its applicants to take at least four A-level subjects, selected from “Mathematics, Further Mathematics, History, Latin, Greek, English Language, English Literature, Phi-

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56. University of Cambridge, *Cambridge Law Test - Specimen Questions*, <http://www.law.cam.ac.uk/admissions/cambridge-law-test-specimen-questions.php> (last visited Mar. 21, 2010).

57. LNAT: The National Admissions Test for Law, *Introduction - What does the LNAT test and how?*, <http://www.lnat.ac.uk/2009/introduction/test.html> (last visited June 18, 2010).

58. *Id.*

59. University of Cambridge, *supra* note 55.

60. Wikipedia, *GCE Advanced Level*, [http://en.wikipedia.org/wiki/GCE\\_Advanced\\_Level](http://en.wikipedia.org/wiki/GCE_Advanced_Level) (last visited June 18, 2010) (Advanced Level of the General Certificate of Education is the series of subject examinations at the end of Years 12 and 13 (Sixth Form), that comprise the “tertiary Further Education (FE) process in the United Kingdom.”).

61. University of Cambridge, *Undergraduate Admissions, Law-Requirements*, <http://www.cam.ac.uk/admissions/undergraduate/courses/law/requirements.html> (last visited Mar. 21, 2010); University of Cambridge, *Undergraduate Admissions, Law*, <http://www.cam.ac.uk/admissions/undergraduate/courses/law/index.html> (last visited Mar. 21, 2010).

62. Churchill College, *Admissions Information: Undergraduates, Law*, <http://www.chu.cam.ac.uk/admissions/undergraduates/applying/courses/law/> (last visited Mar. 21, 2010).

losophy, Physics, Chemistry, Government & Politics, Economics, Psychology, French or any other foreign language, Classics, Biology, Geography, and so forth.”<sup>63</sup> Other major considerations for admission include high grades throughout the General Certificate of Secondary Education and an interview with the admissions committee.<sup>64</sup> Upon successful admission, students matriculate into the law program managed by the Faculty of Law.

In England, a typical law program involves study over three years of residence. Some schools require a set of exams throughout the course study, such as Cambridge’s “Tripos” examinations. For example, at the University of Cambridge, the Law IA examination is administered at the end of the first year of residence. The Law IB examination is taken by students in the second year who have passed Law IA and students who transfer into the law program. The Law II examination is taken by students who have passed Law IB. Due to the structure of Cambridge’s examination system, “there is no combined examination result at the end of the course; each year of study is classed separately, and the B.A. itself is not classed.”<sup>65</sup>

At Cambridge, students who begin studying law in the first year (and thus study for three years), must take “criminal law, constitutional law, law of tort and Civil (Roman) law I” in order to prepare for the Law IA Tripos, which covers papers in those four subjects.<sup>66</sup> In the second year, to prepare for the Law IB Tripos, students select five subjects from a wide range of electives spanning “from family law to international law,” though “[m]ost students take land law and contract law.”<sup>67</sup> The Law IIB Tripos involves subjects of the student’s choosing within a faculty selected range, excluding subjects previously offered for Tripos IA.<sup>68</sup> The third year preparation for the Law II Tripos involves a selection of five subjects “from an even wider range” and testing on sub-

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63. *Id.*

64. *Id.*

65. University of Cambridge, *Faculty of Law, Admissions*, <http://www.law.cam.ac.uk/admissions/> (last visited Mar. 21, 2010); University of Cambridge, *Faculty of Law, Courses*, <http://www.law.cam.ac.uk/courses/> (last visited Mar. 21, 2010); UNIVERSITY OF CAMBRIDGE, FACULTY OF LAW – UNDERGRADUATE PROSPECTUS, <http://www.law.cam.ac.uk/faculty-resources/download/faculty-of-law-undergraduate-prospectus-2005-on-pdf/2598/pdf> (last visited Mar. 21, 2010).

66. University of Cambridge, *Law Prospectus*, *supra* note 65, at 4; University of Cambridge, *Faculty of Law-Courses*, *supra* note 65.

67. University of Cambridge, *Law Prospectus*, *supra* note 65, at 4.

68. University of Cambridge, *Faculty of Law-Courses*, *supra* note 65.



jects within a faculty selected range, excluding subjects previously offered for either Tripos IA or IB.<sup>69</sup>

Although classes are conducted by the law faculty, each student is grouped under a Director of Studies, who “arranges supervisions for each student in nearly all of the subjects,” and who teaches the subject-specific supervisions for one hour per fortnight alongside a Fellow, a practicing barrister or solicitor, or a graduate student.<sup>70</sup> Supervisions are usually “in small groups of between two and six” students, and are a study session format where “written work may be examined, problem questions considered, points raised by lectures discussed and advice given on reading.”<sup>71</sup> It is in this setting that small group guidance and instruction on legal writing within the degree program would most likely occur, if it is to occur at all. However, there does not appear to be a structured, required course focused specifically on the development of legal writing skills within the law degree. As such, the law degree focuses mostly on developing students’ substantive knowledge, with no genuine instruction on the skills necessary to communicate that knowledge.

Although not required for the law degree, at the University of Cambridge, the “Freshfields Legal Research and IT Skills Course” is necessary for continuation to the practice of law, in that it trains first year students in computer-based research skills.<sup>72</sup> Additionally, under the professional regulations, students are not deemed “law graduates” unless they have taken Constitutional and Administrative Law, Criminal Law, Law of Tort, Law of Contract, Land Law, Law of Trusts [Equity], and The Law of the European Union.<sup>73</sup>

Following completion of the law degree, students who intend to become solicitors<sup>74</sup> “must enroll with the Law Society of

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69. University of Cambridge, *Law Prospectus*, *supra* note 65, at 4; University of Cambridge, *Faculty of Law-Courses*, *supra* note 65.

70. University of Cambridge, *Law Prospectus*, *supra* note 65, at 6.

71. *Id.*

72. *Id.* at 8.

73. *Id.* at 10.

74. See Wikipedia, *Solicitor*, <http://en.wikipedia.org/wiki/Solicitor> (last visited June 18, 2010) (“[S]olicitors traditionally dealt with any legal matter apart from conducting proceedings in courts (advocacy), with some exceptions. Minor criminal cases tried in Magistrates' Courts, for example, and small claims civil cases tried in county courts are almost always handled by solicitors.”); Wikipedia, *Barrister*, <http://en.wikipedia.org/wiki/Barrister> (last visited June 18, 2010) (“Solicitors have more direct contact with the clients, whereas barristers often only become involved in a case once advocacy before a court is needed by

England and Wales as a student member and take a one-year course called the Legal Practice Course (LPC), usually followed by two years' apprenticeship, known as a training contract."<sup>75</sup> By contrast, students who intend to become barristers<sup>76</sup> complete the one-year Bar Vocational Course/Bar Professional Training Course "followed by a year training in a set of barristers' chambers, known as pupillage."<sup>77</sup>

By comparison to the stark lack of legal writing instruction in the law degree, the vocational training component for barristers involves heavy emphasis on skill development. The course involves both skill and knowledge, with the skill component consisting of: "Case Work Skills; Legal Research; General written skills; Opinion-writing (that is, giving written advice); Interpersonal Skills; Conference Skills (interviewing clients); Negotiation; Advocacy (court or tribunal appearances)."<sup>78</sup> The knowledge areas taught in the course focus on "Civil Litigation & remedies; Criminal Litigation & sentencing; Evidence; Professional Ethics;" and [t]wo optional subjects, selected from a choice of at least six."<sup>79</sup>

The coverage of skills in the barristers' vocational course is substantially similar to the skills covered in the American first-year legal writing curriculum,<sup>80</sup> with the main difference between the two systems being that in the United States, these skills are covered in the first one-third of the educational component of training to become an attorney, with vocation and education being combined, whereas in England, vocational training is preceded by textbook education. In both systems, the abilities to find the law and communicate it orally and in writing are skills that are crucial to the practice of law. Therefore, regardless of whether the legal quill alternates between ink wells of skill and doctrine (as in the United States), or finishes one well completely before

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the client."). The Barrister is the 'litigator' and the Solicitor is the 'counselor.' In England and Wales, this distinction remains and there are two professions. By contrast, in Canada the professions are fused.

75. Wikipedia, *Legal Education in the United Kingdom*, [http://en.wikipedia.org/wiki/Legal\\_education\\_in\\_the\\_United\\_Kingdom](http://en.wikipedia.org/wiki/Legal_education_in_the_United_Kingdom) (last visited Mar. 21, 2010).

76. "Barristers, as the other branch of the English legal profession, have traditionally carried out the functions of advocacy." *Id.*

77. *Id.*

78. Bar Standards Board, *Education and Training*, *supra* note 30; Bar Standards Board, *Vocational Stage*, *supra* note 30.

79. Bar Standards Board, *Education and Training*, *supra* note 30; Bar Standards Board, *Vocational Stage*, *supra* note 30.

80. ALWD-LWI, *supra* note 33, at 10.

dipping into the other (as in England), the skills necessary for mastery of transactional and litigation legal research, writing and advocacy must be thoroughly taught before the educational and licensure institutions' roles are complete.

#### VI. A FUNDAMENTALS-TO-ADVANCED LEGAL WRITING CURRICULUM: KEY PLAYERS IN THE QUALITY DETERMINATION

Thus, legal writing is a crucial component of any path to lawyering. Yet, more and more legal writing faculty, doctrinal faculty, and employers are noticing that our students and new law graduates are not adequately equipped to enter the demanding work force, not just in terms of substance or being able to grapple with complex issues, but in terms of fundamentals.<sup>81</sup> Employers are no longer willing to expend the time necessary to train new graduates – they want their graduates ready to hit the ground running, skill-set mastered, and tool kit in hand.<sup>82</sup> Law schools have a responsibility to “teach students to be lawyers, not just to think like them.”<sup>83</sup> Furthermore, over fifteen years after the MacCrate Report findings, the 2006 Carnegie Foundation

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81. See Edward H. Telfeyan, *The “Grammar Bee”—One Way to Take the Pain Out of Teaching the Mechanics of Writing*, 17 PERSP.: TEACHING LEGAL RES. & WRITING 25, 25 (2008) (discussing the first assignment in the first year legal writing class, whereupon the professor realized “the deficiencies in understanding what constitutes an effective analogy were dwarfed by the glaring and horrendous number of basic writing errors that appeared in all too many of the papers. These students, you suddenly realize, don’t know how to write.”).

82. University of Ottawa, Common Law Section, *What Employers Are Looking For*, <http://www.commonlaw.uottawa.ca/en/student-services/planning-your-strategy/what-employers-are-looking-for.html> (last updated Dec. 15, 2009); Katherine Mangan, *Law Schools Resist Proposal to Assess Them Based on What Students Learn*, THE CHRONICLE OF HIGHER EDUCATION, Jan. 10, 2010, available at <http://chronicle.com/article/Law-Schools-Resist-Proposal-to/63494/> (quoting James G. Leipold, executive director of NALP: the Association for Legal Career Professionals, stating that “hiring partners at law firms regularly complain to him that they have to spend too much time training new associates in skills they haven’t learned in law school,” and Phillip A. Bradley, senior vice president and general counsel for Duane Reade, a large drugstore chain, stating that “many law firms are developing core competencies they expect of their lawyers, but many law schools aren’t delivering graduates who come close to meeting them.”).

83. Mary Lynch, *A Place to Discuss: Best Practices in Legal Education*, Feb. 22, 2010, available at <http://bestpracticeslegaled.albanylawblogs.org/2010/02/22/national-law-journal-covers-student-learning-outcomes-discussion>.

reported that law schools are still not providing adequate skills instruction.<sup>84</sup>

In England, as the vocational training comes after the academic training, professors in the law faculty wrack their brains often wishing it was the other way around, as it would be more sensible to teach students analytical skills while they learn the substance.<sup>85</sup> In the United States, schools ranked in Tiers 3 and 4 of U.S. News Rankings are perceived to have lower admissions standards and an allegedly weaker student body on admission than their Top 100 ranked counterparts.<sup>86</sup> As such, in part to dispel the myth of weaker graduates, it is quite common for Tiers 3 and 4 schools to have significant academic support systems in place<sup>87</sup> to bridge any projected academic deficiencies based on LSAT scores and GPA.<sup>88</sup> These distinctions notwithstanding, declining student skill sets have been noted nationwide, not just at “lower ranked” schools, but all law schools, regardless of ranking, purpose or mission, should be invested in training students to be lawyers.<sup>89</sup>

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84. See Katherine Mangan, *A Plea for Real-World Training in Law Schools*, 53 CHRONICLE OF HIGHER EDUCATION 20, Jan. 19, 2007, at A6, available at <http://chronicle.com/weekly/v53/i20/20a00601.htm>. See also Gene Koo, The Berkman Center for Internet & Society at Harvard Law School, *NEW SKILLS, NEW LEARNING: LEGAL EDUCATION AND THE PROMISE OF TECHNOLOGY*, 12 (2007), available at SSRN: Available at SSRN: <http://ssrn.com/abstract=976646> (“Socratic dialogue is crucial to developing the foundations of legal thinking, but one pedagogical method cannot provide everything new lawyers should know.”).

85. Several colleagues who teach at law faculties in the UK have shared with the Author their frustrations with their students’ inability to effectively communicate even “the most basic notions in the law programme.”

86. In fact, acceptance rates at such schools are not necessarily indicative of weak admissions policies, see e.g., Top Law Schools.com, *Florida International University College of Law*, available at <http://www.top-law-schools.com/fiu-law.html> (last visited June 15, 2010) (“Acceptance at FIU is not easy for a Tier 4 school. In 2008, 2,500 applicants applied and only 536 were accepted, resulting in a competitive acceptance rate of 26.7 percent.”), because Tier 3 and Tier 4 schools cater to a different kind of prospective student than do the schools ranked much higher in the list.

87. See Johanna K.P. Dennis, *Ensuring a Multicultural Educational Experience in Legal Education: Start with the Legal Writing Classroom*, 16 TEXAS WESLEYAN L. REV. 613, 629 (2010).

88. In fact, the Author posits that if any school should transition to a three-semester program, it should be those with the perceived weaker students.

89. See Koo, *supra* note 84, at 13 (“All schools have some interest in providing students with practice skills, even though different schools tend to propel their students onto different career paths. Regional and local schools place a substantial proportion of their students in mid- and small-sized local

Discussions amongst legal writing faculty perennially venture into debates about whether the department should be teaching students grammatical construction: Is grammar and composition the responsibility of legal writing faculty? Are legal writing faculty simply glorified English teachers?<sup>90</sup> At some law schools, beyond any in-school writing center or specialist, due to being part of a university, the law school can take advantage of a writing center run by an English department that provides English language and grammar support. However, stand-alone law schools or law schools off-site from their main institutions do not typically have this luxury.

Another crucial legal analysis skill is that of critical reading. In fact, "reading" as a core lawyering skill . . . is the one that seem[s] most flawed in the first-year legal writing class," and "case analysis, statute analysis, synthesis, and application [are] not possible unless students critically read the material with which they were working."<sup>91</sup> Thus, while the typical two-semester program may do an adequate job of covering the middle ground (teaching the basics of brief and memo writing), such a program makes several assumptions. It presupposes that students enter with a solid foundation, are already "thinking like lawyers," already have effective study habits and read critically, and that they will be able to extrapolate their classroom learning to more

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firms – the ones that the Pace study found reluctant to train new lawyers – and have particularly strong reasons to pay attention to this need. But even "top-tier" schools whose graduates often start out in large firms have an interest in ensuring some grounding in practice and practice-management skills for at least two reasons: professional development programs remain variable in quality, and many have not yet grasped the new skills described in Part III of this study.

The development of skills demands its own pedagogy, distinct from the Socratic method relied upon to convey the basics of "thinking like a lawyer." As the Carnegie study observes, "learning professional knowledge and skill 'in role' is a distinct pedagogical genre and needs the same care and attention" as traditional techniques. Law schools today employ two main methods of developing students' skills: clinical practice and simulation. Our preliminary data suggests that schools are not optimizing their use of technology to accomplish the goals of either" (footnotes omitted).

90. See generally Aida M. Alaka, *The Grammar Wars Come to Law School*, 59 J. LEGAL EDUC. 343 (2010).

91. Debra Moss Curtis and Judith R. Karp, "In A Case, In A Book, They Will Not Take A Second Look!" *Critical Reading In The Legal Writing Classroom*, 41 WILLAMETTE L. REV. 293, 294 (Spring 2005) ("Many students in our classes were not actively engaging in the material that they were reading. As we spoke with colleagues nationwide, we found this to be the case elsewhere as well.").

complex multi-issue analyses without ever having practiced these skills.

Thus, while these and other challenges are faced by faculty at most all law schools, some law schools have changed their curriculum in such a way as to provide a structure in which to begin to fill in the gaps at both ends: fundamentals on the front end and mastery on the back end. Whatever the original reason for designing the program this way, at these schools, the legal writing program spans beyond the typical two-semester program. Not all legal writing programs originate as a two-semester program and then shift to a three-semester program after a recognized need for change. Some programs begin as a three-semester program based on the institution and writing director's vision.<sup>92</sup>

The starting point for any transition in a law school's legal writing program is a quality determination: determining the goals sought to be accomplished in the program, and then assessing whether the program meets those goals. Faculty should play a substantial role in defining and implementing standards in higher education, and faculty and administration should work together to control management of such quality.

Due to the fact that students come to law school to obtain the education necessary to practice law, the role of legal educators is essential to help students achieve this goal. Within the classroom, legal educators have an obligation to "create and maintain [an] effective and healthy teaching and learning environment[.]"<sup>93</sup> Further, legal educators have an obligation to society to educate students in a manner such that they will become "effective, responsible lawyers,"<sup>94</sup> and to change the current trend of incompetent graduates.<sup>95</sup> Therefore, an institution's faculty has a substantial role in delivering a quality education to attain these concurrent goals. Since the goal of legal education is to educate students to become practicing lawyers, an institution cannot effectively assess its ability to meet that goal by solely looking at inputs – what the curriculum looks like and who is teaching what. The institution must critically assess what is being

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92. See Levine, *supra* note 7, at 613-14. It should be noted however, that the creation of or change to a three-semester writing program is different from the increased offering of elective advanced legal writing courses. The former is still less common, whereas the latter is becoming increasingly the norm. See Smith, *supra* note 41, at 120 n.3 (discussing elective advanced legal writing courses and a substantial number of articles written about such courses).

93. See Stuckey, *supra* note 27, at 80-81.

94. See *id.* at 48-51.

95. See generally *id.* at 26.

learned by the students from semester to semester and the institution should ask itself: What can our students do after the first year, the second year, and when they graduate? What skills do they really possess?<sup>96</sup>

In assessing the student learning outcomes and quality of a program of legal education, faculty within the legal writing department of the institution play the most crucial roles. Since so many skills that students seek in law school are taught and practiced in the legal writing classroom,<sup>97</sup> the legal writing faculty members are in the best position to observe whether the program functions overall and on a day-to-day level. In addition, the nature of the legal writing program is such that faculty within it tend to assess student learning more frequently than their doctrinal counterparts. As such, the legal writing professors are often the first parties to know whether students are learning and able to communicate their knowledge in terms of not only the skills sought within the program, but the doctrines sought to be taught by the doctrinal faculty.<sup>98</sup> Therefore, since these faculty members are in the best position to assess the program's effectiveness, they should play a key role in defining its goals and assessing its quality. Faculty in legal writing departments should apply the "best practices for assessing institutional effectiveness" to their own legal writing programs. These best practices involve first, setting a regular evaluation schedule, then gathering data from divergent and diverse sources (not only students, but other faculty as well).<sup>99</sup> One crucial component of the evaluation is to integrate "student performance and outcome assessment results" into any assessment of the program.<sup>100</sup> In judging student per-

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96. See generally ABA, *supra* note 22.

97. Six main attributes of effective and responsible lawyers are: self-reflection and lifelong learning skills; intellectual and analytical skills; core knowledge of the law; core understanding of the law; professional skills; and professionalism. Stuckey, *supra* note 27, at 48. These attributes are commonly found in legal writing instruction.

98. Doctrinal courses, such as constitutional law, contracts, property and torts, tend to culminate in a final examination worth 100% of the student grade. By comparison, the legal writing course grade tends to be based on multiple assignments throughout the semester and year. Thus, when legal writing professors use topics similar to those in doctrinal courses and the students are unable to communicate the information back to the writing professor, both the writing professor and the doctrinal professor can use the assignment as a signal that the student has not grasped the concept in the doctrinal course.

99. ROY STUCKEY, BEST PRACTICES FOR LEGAL EDUCATION 265-66 (Clinical Education Association, 2007).

100. *Id.* at 270.

formance, faculty should follow “best practices for assessing student learning.”<sup>101</sup> In addition, based on the law school’s obligation to society, a program evaluation should “solicit and incorporate opinions from outside of the academy,” such as from employers.<sup>102</sup> Finally, the data gathered should be used to assess the program’s current effectiveness and to set future goals.<sup>103</sup>

However, this evaluation cannot be undertaken solely within a department. The department faculty needs to work with the institution’s administration as a cohesive unit in order for any evaluation of a program’s effectiveness and curriculum redesign to have meaning and purpose within the institution. For example, administration may be able to guide the process for program change, or may know of other institutional changes that may benefit the legal writing program. Thus, managing the legal writing program and assessing its effectiveness should be a collaborative task undertaken by the department head (and the faculty members in the department) and the academic deans.

## VII. TRANSITIONING TO A THREE-SEMESTER PROGRAM

Notwithstanding the theoretical ability to create a perfect three-semester program, if the program does not devote sufficient time early on to the development of the foundation of legal analysis, basic communication skills in both the language of instruction and in the law, and writing structure, organization and clarity, then even a three-semester program will fail at educating all its students. No matter how innovative and interesting the second-semester or third-semester course may be, and no matter how engaged with the substantive area the students may be, students lacking a solid foundation in written and oral communication and the basics of legal analysis will be less successful in keeping up with the demands of the increasing complexity through the second and third semesters. In fact, this feeling of “not being sufficiently prepared” to handle the challenge of the third-semester course can permeate an otherwise brilliant-on-paper course with the feeling that it is a course in remedial writing.

In the author’s teaching experience, this feeling affects the overall classroom environment. Students who do not have a full grasp of the basics are reticent and often hesitant to provide answers to questions (often doubting themselves even if they do an-

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101. *Id.* at 271.

102. *Id.* at 272.

103. *Id.*



swer), thus, making it more difficult for the professor to informally know “over their heads.” On the other end of the spectrum, students who have a thorough foundation tend to have little patience for spending time reviewing what they already know well; they want to move on and work on something more intellectually challenging. When the professor spends too much time on basics (in the students’ opinions), these students tend to feel that the professor is “talking down to them.” While review can be helpful in an advanced course, even for the students who genuinely do not know the material, students in their second year of law school are often resistant to the reminder that they are missing some pieces of the foundation from first year. Unless an institution carefully crafts the foundation (first-semester) course, including periodic benchmarks that every student must meet in order to continue to the intermediary and mastery courses, the typical second- and third-semester classrooms will consist of both of these students: she who has the foundation and she who does not.

#### A. *Effective Elements of a Three-Semester Program*

Faculties of law that are considering either a comprehensive legal writing program restructure or redesign, a shift from requiring a two-semester sequence to requiring a three-semester sequence, or building a legal writing program from the ground up can gain valuable insight into what components should be in the overall program by looking to what other institutions do. Thereafter, the faculty considering the change can determine which elements stand to be effective at their own school based on its educational goals and mission, locale, student body, and instructional and financial resources.

To gain insight into what a legal writing program at American institutions with three-semester programs looks like, the author started from the premise reported in the 2008 ALWD-LWI Survey that 47 of 181 responder schools reported having a required credit allocation in the second year of law school.<sup>104</sup> Of these forty-seven (47) schools, twenty-one (21) permitted the release of their names and legal writing department head contact information.<sup>105</sup> So as not to reinvent the wheel by contacting all 199 ABA-accredited U.S. law schools,<sup>106</sup> the author formulated a

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104. ALWD-LWI, *supra* note 5.

105. Survey administered to 47 schools, 21 of which participated. Nashville, TN. (2009-2010) (on file with author).

106. There are 199 U.S. institutions conferring a first degree in law. See *supra*, at Section III; ABA Standards; ABA, *supra* note 10.

basic survey which was sent to the legal writing departments at each of the twenty-one (21) schools.<sup>107</sup> Data from thirteen (13) responder schools ("studied schools" or "studied programs") was compiled and tabulated (See Appendix and Tables herein).<sup>108</sup> The data focuses on the first and third-semester courses, such that institutions considering a change can assess where to start and where to end.

Overall, the programs at all thirteen (13) studied schools involved elements similar to the trajectory of the traditional two-semester program: working from a legal office memorandum to an advanced appellate brief. The most distinguishing features of these programs were their credit allocations, staffing models, grading models, and division of writing assignments.

There was some uniformity in terms of grading models and writing assignments in the first semester: in 12 of 13 (92.3%) studied programs student performance in the first semester course is reported primarily using letter grades; all thirteen (13) studied programs rely on letter grades in the third semester course; and eleven (11) studied programs require an office memorandum in the first semester.<sup>109</sup> The studied programs involved a wide array of elements in the third semester course, with the one consistency being that most (10 of 13, or 76.9%) involved an appellate brief.

On average, the studied programs allocated more credits earlier on in the three semesters: 2.42 credits in 1L fall, 2.38 credits in 1L spring, and 2.23 credits in the third-semester (required at some schools, at varying times most commonly in 2L fall or 2L spring).<sup>110</sup>

Instruction in first semester courses is primarily through full-time legal writing department faculty members. In 12 of 13 (92.3%) studied programs, full-time legal writing faculty teach

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107. The Author teaches at one of these schools.

108. Data from fourteen schools was obtained, including the Author's institution. However, one school was omitted from the report because the third semester appeared to be more akin to the upper level writing requirement and less a required cohort or third semester in a three-semester mandatory program.

109. Data from two schools was excluded: one school has a three-part introduction course: law, legal reasoning, legal analysis, and another school taught only research in 1L fall.

110. For purposes for the survey, a school with a three-semester program could have its required third semester at any point after the first two semesters, so long as the program contemplated that students would take three specific courses (or sets of courses). Most schools required that students complete the third semester in either in the fall or spring of the second year.

students in their first semester of law school. Some programs' staffing models in the first semester also included part-time faculty (such as librarians, administration faculty, clinicians, or other non-legal writing department faculty) or adjunct faculty.<sup>111</sup> In contrast, instruction in third semester courses tends to more heavily involve legal practitioners. In 10 of 13 (76.9%) studied programs, adjunct faculty members teach students in the required third semester (in three (3) such programs, adjunct faculty alone teach the third semester course, while in seven (7) programs a combination of full-time faculty and adjunct faculty is the magic formula). As for the remaining three (3) programs, full-time faculty members bear the sole responsibility for teaching the 2L course.

Similar to the decrease in average credits allocated each semester in a three-semester program, the transition from full-time faculty to adjunct faculty makes logical sense as students develop their skills. In the first semester of law school, students are in need of more supervision and more direct faculty contact, guidance and instruction on the basics. As discussed above, there is much to be covered in a first year fall semester legal writing course to take the novice student even as far as a multi-issue research-based office memorandum. It is no surprise; therefore, that most of the studied programs relied on full-time legal writing faculty to teach the greenling students. Notably, if the legal writing department has taught its students effectively in the 1L year, then these students are ready for something different in their third required semester. The third semester then can be the appellate version of a trial practice class – involving practicing attorneys who can share their real life experience with real cases. The average staffing model at the studied schools for the third-semester course reflects this. Finally, the data collected from the studied schools suggests that in the third-semester course there is room for more creativity in assignments and instructional topics.

**Table 1 – Staffing Models in the Three-Semester Legal Writing Program**

**Question Posed:** What is your law school's teaching model for the legal writing program? For each category please indicate the number of individuals presently at the law school / hired to teach in the program, and the semester(s) they are responsible for teaching.

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111. Two schools follow the adjunct model, with a few full-time faculty members supervising a large number of adjunct professors.

<u>Staffing Model</u>	<u>Average number of individuals</u>	<u>% of studied schools using each category to teach in the indicated semester:</u>		
		<u>1L fall</u>	<u>1L spring</u>	<u>2L fall</u>
Full-time faculty	7.1 <sup>i</sup>	92.3% (12 of 13)	100.0% (13 of 13)	76.9% (10 of 13)
Part-time faculty	4.0 <sup>ii</sup>	30.8% (4 of 13)	23.1% (3 of 13)	0.0% (0 of 13)
Adjunct faculty	4.7 (44.0) <sup>iii</sup>	23.1% (3 of 13)	23.1% (3 of 13)	76.9% (10 of 13)
3L students	18.0 <sup>iv</sup>	7.7% (1 of 13)	0.0% (0 of 13)	0.0% (0 of 13)

<sup>i</sup> The two schools that the adjunct model were not included in the computation of the average number of full-time faculty.

<sup>ii</sup> Four schools reported using part-time faculty. Of these four schools, three reported these faculty members as lawyer librarians, faculty from other academic departments, or clinicians. At all four schools, these faculty members helped teach the 1L program, but did not teach in the third semester.

<sup>iii</sup> The first number is for the eleven schools that follow a traditional legal writing department structure, and the second number is for the two schools following the adjunct model.

<sup>iv</sup> As only one school reported using 3L students, that school's number of individuals is reported.

<sup>v</sup> As only one school reported using other law school faculty/staff, the average number was not calculated.

Table 2 – Staffing Models for the Third-Semester Course

<u>Staffing Model</u>	<u>% of studied schools following the indicated staffing model</u>
Full-Time Faculty Only	23.1% (3 of 13)
Adjunct Faculty Only	23.1% (3 of 13)
Combination of Full-Time Faculty and Adjunct Faculty	53.8% (7 of 13)

Tables 3a & 3b – Assignments in the First-Semester Course

What is covered on the “Fundamentals” end in the studied schools (1L fall)<sup>i</sup>

<u>Table 3a: Written Skills in 1L fall</u>	
Office memorandum	100.0% (11 of 11)
Client letter	18.2% (2 of 11)

<u>Table 3b: Oral Skills in 1L fall</u>	
Pretrial motion argument	
Trial motion argument	

Pretrial brief	9.1% (1 of 11)	Appellate brief argument	
Trial brief		In-class presentation	27.3% (3 of 11)
Appellate brief		Oral report to senior partner	18.2% (2 of 11)
Law review article		Other oral skill: a) Interviewing	9.1% (1 of 11)
Drafting documents	9.1% (1 of 11)		
Drafting legislation			
Other writing assignment: a) Partner email b) Short writing exercises c) Analysis exercises, bar exam answers	a) 18.2% (2 of 11) b) 18.2% (2 of 11) c) 9.1% (1 of 11)		

<sup>i</sup> Two schools were not included in this Table: one school (School E) had a three part introduction course: law, legal reasoning, legal analysis, and another school taught only research in 1L fall.

Tables 4a & 4b – Assignments in the Third-Semester Course  
What is covered on the “Mastery” end in the studied schools with 3 semester programs (2L fall / 2L spring)<sup>i</sup>

<u>Table 4a: Written Skills in Required 3rd semester in either 2L fall or 2L spring</u>		<u>Table 4b: Oral Skills in Required 3rd semester in either 2L fall or 2L spring</u>	
Office memorandum		Pretrial motion argument	7.7% (1 of 13)
Client letter	7.7% (1 of 13)	Trial motion argument	
Pretrial brief	7.7% (1 of 13)	Appellate brief argument	69.2% (9 of 13)
Trial brief		In-class presentation	7.7% (1 of 13) <sup>ii</sup>
Appellate brief	76.9% (10 of 13)	Oral report to senior partner	
Law review article		Other oral skill: a) Mediation/negotiation b) Client interviewing/client counseling c) Varies with section of course	a) 7.7% (1 of 13) b) 7.7% (1 of 13) c) 7.7% (1 of 13)
Drafting documents	23.1% (3 of 13) <sup>ii</sup>		
Drafting legislation			

Other writing assignment:	a) 7.7% (1 of 13)
a) Bench Memo	b) 7.7%
b) Varies with section of course	(1 of 13)

<sup>i</sup> Schools H and M's third-semester course could be taken any semester in 2L or 3L year. School H's third-semester course is offered every semester, and could be substituted by a specific set of upper-level seminars so long as the "professor requires a publishable quality paper with conferences and multiple drafts."

<sup>ii</sup> One school (School C) provides students with the option of taking their third-semester course in either appellate practice (fall) or transactional practice (spring).

As noted above, in the development of legal writing skills in pursuit of lawyering as a career, "there is far more to teach than can be taught in the standard first-year legal writing course."<sup>112</sup> A true third-semester course should be one in advanced legal writing – a semester in which something other and beyond the basics of memo to brief plus research and citation formula is taught. According to legal writing professor and expert Michael R. Smith, there are four general approaches to developing advanced legal writing courses: Horizontal Advancement Approach; Vertical Advancement Approach; Survey Course Approach; and Integrative Approach.<sup>113</sup> Smith bases his analysis and taxonomy on thirty-three syllabi in the 1997 Syllabus Bank,<sup>114</sup> though his sample accurately reflects the types of elective advanced legal writing courses offered at ABA-accredited institutions, even today.<sup>115</sup> The Table below is illustrative of the aspects of each of these approaches.

112. Louis J. Sirico, Jr., *Advanced Legal Writing Courses: Comparison Approaches*, 5 PERSPECTIVES: TEACHING LEGAL RESEARCH & WRITING 63, 63 (1997).

113. See Smith, *supra* note 41.

114. *Id.* at 121 n.4.

115. Compare *Id.* at 121 n.5 (listing categories of upper-level elective legal writing courses in the 1997 Syllabus Bank as: 1) advanced legal writing-general writing skills; 2) advanced legal writing-survey course; 3) drafting, general; 4) drafting, litigation; 5) drafting, legislation; 6) drafting, transactional; 7)

Table 5 - Smith's Four Approaches to Advanced Legal Writing<sup>116</sup>

<u>Approach</u>	<u>Purpose/Goal</u>	<u>Examples of substance covered</u>	<u>Examples of courses</u>
<u>Horizontal Advancement Approach</u>	"an opportunity to introduce students to new 'genres' of legal writing" that are different from the genres introduced in the first-year <sup>117</sup>	Case notes, short articles, judicial opinions, statutes, pleadings, contracts, opinion letters, etc.	drafting; judicial opinion writing; scholarly writing
<u>Vertical Advancement Approach</u>	To present "more sophisticated aspects of a genre to which the students have been already exposed."	advanced instruction in persuasive writing (may or may not be tied to a specific type of legal practice or document); rhetoric theory	Advanced brief writing; advanced appellate advocacy; advanced moot court etc.
<u>Survey Course Approach</u>	To "cover a myriad of legal writing topics," by reviewing first-year instruction in objective/predictive and persuasive writing, then covering various advanced aspects of the first-year skills [vertical] and introducing new genres [horizontal]	The writing process; intro to legal drafting/litigation drafting/transaction drafting; intro to scholarly writing; advanced instruction on writing questions presented/statements of fact/discussion section of memos or briefs	No specific course name
<u>Integrative Approach</u>	To "augment[] introductory legal writing instruction by integrating advanced writing instruction with	"[a]dvanced writing skills with instruction on other lawyering skills [e.g.] client interviewing, client counseling, pretrial	No specific course name

advanced advocacy; 8) scholarly writing; 9) judicial opinion writing) *with* ALWD-LWI, *supra* note 5, at 12 (listing categories of upper-level elective legal writing courses offered at 164 schools as of 2008 as: 1) advanced legal writing-general writing; 2) advanced legal writing-survey course; 3) drafting, general; 4) drafting, litigation; 5) drafting, legislation; 6) drafting, transactional; 7) advanced advocacy (excluding student-run moot court programs); 8) scholarly writing; 9) judicial opinion writing; 10) advanced research).

116. Compiled from Smith, *supra* note 41, at 121-31.

117. According to Smith, the genre of legal writing typically addressed in the first year is "Application Analysis Writing," which involves "communication of legal analysis based on established legal authorities" in the context of a specific factual scenario. Smith, *supra* note 41, at 122-23. Other genres are "Legal Drafting" and "Critical Analysis Writing" (which involves "communication of legal analysis based on established legal authorities," outside the context of a specific factual scenario). *Id.*

	instruction on another topic.”	practice, trial practice, negotiation, and alternative dispute resolution;” or advanced legal writing in the context of an upper-level doctrinal subject or course	
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### B. *Utopia – where the Road Ends*

Based on the data above, the author posits that an ideal three-semester program starts with more credits in the first-semester, and decreases towards the third-semester. All three semesters are graded, but the grades can be based on a number of assignments during each semester. In this way, in the first semester, students learn the foundation of legal analysis, research and citation, working towards a research-based multi-issue office memorandum, just as is done in the traditional two-semester program, by spending more time on explanations, examples, practice, and refinement of these elements. Thus, when there are three semesters, the program need not force students to progress all the way to multi-issue *and* entirely research-based office memorandum in the same semester. The 1L fall course can culminate in a partially research-based office memorandum involving two related issues, and the 1L spring course can take students further into research and issue analysis while introducing them to the art of persuasive writing. The third-semester course can be designed in a number of ways, using Smith’s approaches as a guide. This leaves two unresolved program components: staffing for the program and curriculum approach for the second- and third-semester courses.

#### 1. Selecting a Staffing Model

Certainly, an institution’s resource restrictions should be considered when designing its legal program’s staffing model. For example, School G chooses to have third-year students teach the first semester course under general supervision of the director and associate director of legal writing. Librarians teach the research component of the course. In this way, using upper-level students presents two benefits. First, the third-year students are able to function as mentors for their junior colleagues, and second, the course is able to be designated as pass/fail, which permits the development of the incoming student with minimal consequence to the student’s GPA. On the other hand, there are downsides as well. Most notably, these include: the actual or per-



ceived lack of uniformity in instruction between sections; training the third-year students; quality assurance in instruction requiring substantial oversight by the legal writing department faculty; the potential for the 1L students not taking the legal writing course or deadlines within it seriously because of the pass/fail structure; the potential for disrespect – as students may view the legal writing faculty as equal to the third-year students; and the fact that third-year students simply do not have the wealth of knowledge or resources at their disposal as do the faculty in the legal writing department.

Choosing to assign full-time faculty to teach primarily in the 1L courses, and have adjunct faculty primarily teaching in the 2L course works, given the proper staff, administrative, and financial resources.<sup>118</sup> There are also intangible benefits to having more advanced students taught by attorneys – a sort of apprenticeship ensues, networking begins, professionalism can be modeled, and students begin to envision themselves in the practice of law. A few identifiable downsides to the third-semester adjunct model may be the larger number of adjuncts necessary to keep class sizes down, the need to offer the 2L course in both semesters because of staffing issues, and the need for legal writing department oversight of the adjunct faculty.

## 2. Curriculum Approach - Sample Assessment of the Interior and Mastery

### *Components of a Three-Semester Program*

The first step to assessing an institution's existing legal writing curriculum or building a legal writing curriculum from the ground up is to determine what approaches will be covered in the second-semester and third-semester courses.<sup>119</sup> Since the standard end point at most of the studied programs involved an appellate brief, the focus in the assessment is less on the specific types of the assignment and more on the approach taken in the course design. In this context, it may be helpful to view a three-semester program and determine how the program involves Smith's approaches.

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118. For example, adjuncts do not usually have time to design a course curriculum – the legal writing department typically needs to assign a curriculum to be taught.

119. First semester was discussed above, and should substantially mirror the first half of the fall semester in a two-semester program, providing time in the second half of the course to develop those skills.

The curriculum at School G follows a three-semester, forty-two (42) week track. The first semester involves instruction in the fundamentals of legal writing through multiple office memo assignments. Subsequently, students are taught persuasive writing in the trial and appellate contexts in their second and third semesters, respectively.

The second semester is a graded course. This course focuses more on theory and practice, and covers legal research, citation, multiple-issue legal analysis, advanced legal memorandum writing, drafting basic persuasive legal documents (pre-trial or trial brief), basic oral advocacy, and other related skills (differing per instructor, but may include contract/agreement drafting, judicial opinion writing, litigation documents/motion practice, and legal article writing). The third semester, in the fall of the second year, is also a graded course. It involves advanced persuasive writing in the context of appellate practice, advanced oral advocacy, and some additional skills depending on the instructor (e.g., rhetoric, analysis theory, and jurisprudence). Having a semester of writing instruction after most students have worked in the legal field for a summer, enables the professor to engage in a more sophisticated dialogue with the students about writing in the practice of law. School G also offers upper-level advanced legal writing electives, including advanced persuasive writing in the context of a moot court competition, seminar (doctrinal) courses with legal writing assignments, and courses in legal drafting.

Because School G's curriculum is spread over three semesters, vertical advancement is achieved in the third semester, the survey course approach informs the second semester, and the integrative approach informs both the second and third semesters (second semester involving integration with lawyering skills, and second and third semester integration with upper-level doctrinal subject areas, depending on the professor). The most significant outcome of this extended curriculum is that in the two subsequent semesters, students are already familiar with the foundational lawyering skills, and thus, more time can be spent developing these skills. The curriculum may be more advanced than in a system where the students are simultaneously becoming familiar with the basics and learning how to apply them to more complex scenarios.

### *C. Reaffirming the Rationale for the Change*

The two-semester traditional curriculum insufficiently accounts for the time it takes students to adapt to the changes necessary to be successful in legal writing, law school, and life as a

lawyer. While schools should offer upper-level elective courses in advanced legal writing regardless of whether the required curriculum is two or three semesters long, far from all of these electives involve vertical advancement (going beyond the basic introduction to brief writing),<sup>120</sup> which is what is crucially lacking in a two-semester program. These electives involve more of the horizontal, survey course, and integrative approaches. Thus, a three-semester program should focus more on vertical advancement than on horizontal advancement,<sup>121</sup> because the driving force behind creating such a program should be on providing sufficient time for the students to develop the analytical skill set and be reborn as masters of legal writing. Thus, the three-semester program should be one in which the two-semester curriculum is lengthened, providing more growth time at the onset, and some element of vertical advanced legal writing in the third required semester. Focusing on vertical advancement supports the need to lengthen the learning process. Overall, if an institution *must* choose, students do not need *more genres* introduced in the required curriculum; what they need is *more time* to better develop their skills prior to venturing into other genres.

While a three-semester program is different from merely offering advanced legal writing courses as electives, the reasons for having a legal writing curriculum that vertically advances beyond the first year are nonetheless quite similar. Although Smith's vertical advancement is primarily in the context of an advanced course in appellate brief writing or in rhetorical theory, vertical advancement in a three-semester program more than

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120. Of the 10 categories on the 2008 ALWD-LWI Survey, only three involve vertical advancement (#1 - advanced legal writing-general writing, #7 - advanced advocacy, and #10 - advanced research). One involves the survey course approach (# 2 - advanced legal writing-survey course) and the remaining seven involve horizontal advancement (# 3- drafting, general; #4 - drafting, litigation, #5 - drafting, legislation - #6 - drafting, transactional; #8 - scholarly writing; #9 - judicial opinion writing). Of the schools that indicated that they offered electives in courses involving vertical advancement, 61 schools reported having a course in advanced legal writing-general writing, 90 schools reported having a course in advanced advocacy, and 50 schools reported having a course in advanced research. By comparison, 161 schools indicated that they offered a course in scholarly writing (a horizontal advancement approach course), and a substantial number of schools offered courses in drafting (drafting, general - 62 schools; drafting, litigation - 62 schools, drafting, legislation - 41 schools; drafting, transactional - 72 schools). See ALWD-LWI, *supra* note 5, at 12.

121. It should be noted that in lengthening the program, there may be room for including some aspects of the Survey Course Approach or the Integrative Approach through the entire curriculum.

just delving deeper into appellate briefs, than could be done in a two-semester program. The main benefit in lengthening the program to three-semesters is that it “allows the teacher to build directly on . . . [all or any of the] experience[s] of the first year and to explore more sophisticated aspects . . . [of the writing] with students who are no longer beginners.”<sup>122</sup> Other tangential benefits include the opportunity for the teacher and student to spend more time mastering the skill of persuasion (crucial to lawyering) and enriching the study of law. There are some drawbacks to vertical advancement (e.g., teacher fears that the depth may be beyond student capabilities, few textbooks, or highly specialized focus on areas constituting a small percentage of the actual practice of law),<sup>123</sup> but these are not sufficient to outweigh the need for students to have as many opportunities as possible to practice their writing skills and develop beyond the basics.

Also, a three-semester program can involve more than vertical advancement, in that the addition of the third semester may provide room to include aspects of the Survey Course Approach or the Integrative Approach through the entire curriculum. Thus, students may be introduced to some basic elements of different genres of legal writing and have some integration of upper-level doctrine throughout their three-semester experience. The most substantial concerns regarding incorporating Survey and Integrative Approaches into a three-semester program are surface-skimming in the introduction of new genres, and student unfamiliarity with the upper-level doctrine, requiring that teachers be experts in the doctrine and spend more time lecturing on subjects other than writing.<sup>124</sup> These drawbacks can be mitigated depending on the semester in which the approach is incorporated.

Overall, with thoughtful planning and sufficient resources, an institution can design its legal writing program to be better able to meet the goal of training law students to become lawyers, and it can set benchmarks for determining whether its students have learned and retained the skills necessary to be successful in the practice of law.

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122. Smith, *supra* note 41, at 132.

123. Smith, *supra* note 41, at 132-133 & 133, n.30.

124. Smith, *supra* note 41, at 133-35.

## VIII. CONCLUSION

No curricular change is easy, and a programmatic overhaul and transition from two-semesters to three is no exception. Yet, if the end goal is to produce students who are ready to tackle real cases alongside practitioners, engage in the skilled exercise of legal analysis, and *become* lawyers rather than just *think* like lawyers, then institutions and legal writing departments need to rethink the growth and mastery process of the art of legal writing and move towards a lengthened and deeper curriculum.